

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 588

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits.

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## IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 16), 1995

Mr. DASCHLE (for himself, Mr. HARKIN, Mr. WELLSTONE, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Retiree Health Bene-  
5       fits Protection Act”.

6       **SEC. 2. RULES GOVERNING LITIGATION INVOLVING RE-**  
7       **TIREE HEALTH BENEFITS.**

8       (a) IN GENERAL.—Part 5 of subtitle B of title I of  
9       the Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1131 et seq.) is amended by adding at the end  
2 the following new section:

3 **“SEC. 516. RULES GOVERNING LITIGATION INVOLVING RE-**  
4 **TIREE HEALTH BENEFITS.**

5 “(a) MAINTENANCE OF BENEFITS.—

6 “(1) IN GENERAL.—If—

7 “(A) retiree health benefits or plan or plan  
8 sponsor payments in connection with such bene-  
9 fits are to be or have been terminated or re-  
10 duced under an employee welfare benefit plan;  
11 and

12 “(B) an action is brought by any partici-  
13 pant or beneficiary to enjoin or otherwise mod-  
14 ify such termination or reduction,

15 the court without requirement of any additional  
16 showing shall promptly order the plan and plan  
17 sponsor to maintain the retiree health benefits and  
18 payments at the level in effect immediately before  
19 the termination or reduction while the action is  
20 pending in any court. No security or other undertak-  
21 ing shall be required of any participant or bene-  
22 ficiary as a condition for issuance of such relief. An  
23 order requiring such maintenance of benefits may be  
24 refused or dissolved only upon determination by the

1 court, on the basis of clear and convincing evidence,  
2 that the action is clearly without merit.

3 “(2) EXCEPTIONS.—Paragraph (1) shall not  
4 apply to any action if—

5 “(A) the termination or reduction of re-  
6 tiree health benefits is substantially similar to  
7 a termination or reduction in health benefits (if  
8 any) provided to current employees which oc-  
9 curs either before, or at or about the same time  
10 as, the termination or reduction of retiree  
11 health benefits, or

12 “(B) the changes in benefits are in connec-  
13 tion with the addition, expansion, or clarifica-  
14 tion of the delivery system, including utilization  
15 review requirements and restrictions, require-  
16 ments that goods or services be obtained  
17 through managed care entities or specified pro-  
18 viders or categories of providers, or other spe-  
19 cial major case management restrictions.

20 “(3) MODIFICATIONS.—Nothing in this section  
21 shall preclude a court from modifying the obligation  
22 of a plan or plan sponsor to the extent retiree bene-  
23 fits are otherwise being paid by the plan sponsor.

24 “(b) BURDEN OF PROOF.—In addition to the relief  
25 authorized in subsection (a) or otherwise available, if, in

1 any action to which subsection (a)(1) applies, the terms  
2 of the employee welfare benefit plan summary plan de-  
3 scription or, in the absence of such description, other ma-  
4 terials distributed to employees at the time of a partici-  
5 pant's retirement or disability, are silent or are ambigu-  
6 ous, either on their face or after consideration of extrinsic  
7 evidence, as to whether retiree health benefits and pay-  
8 ments may be terminated or reduced for a participant and  
9 his or her beneficiaries after the participant's retirement  
10 or disability, then the benefits and payments shall not be  
11 terminated or reduced for the participant and his or her  
12 beneficiaries unless the plan or plan sponsor establishes  
13 by a preponderance of the evidence that the summary plan  
14 description or other materials about retiree benefits—

15           “(1) were distributed to the participant at least  
16       90 days in advance of retirement or disability;

17           “(2) did not promise retiree health benefits for  
18       the lifetime of the participant and his or her spouse;  
19       and

20           “(3) clearly and specifically disclosed that the  
21       plan allowed such termination or reduction as to the  
22       participant after the time of his or her retirement or  
23       disability.

1 The disclosure described in paragraph (3) must have been  
2 made prominently and in language which can be under-  
3 stood by the average plan participant.

4 “(c) REPRESENTATION.—Notwithstanding any other  
5 provision of law, an employee representative of any retired  
6 employee or the employee’s spouse or dependents may—

7 “(1) bring an action described in this section on  
8 behalf of such employee, spouse, or dependents; or

9 “(2) appear in such an action on behalf of such  
10 employee, spouse or dependents.

11 “(d) RETIREE HEALTH BENEFITS.—For the pur-  
12 poses of this section, the term ‘retiree health benefits’  
13 means health benefits (including coverage) which are pro-  
14 vided to—

15 “(1) retired or disabled employees who, imme-  
16 diately before the termination or reduction, have a  
17 reasonable expectation to receive such benefits upon  
18 retirement or becoming disabled; and

19 “(2) their spouses or dependents.”

20 (b) CONFORMING AMENDMENT.—The table of con-  
21 tents in section 1 of such Act is amended by inserting  
22 after the item relating to section 515 the following new  
23 item:

“Sec. 516. Rules governing litigation involving retiree health benefits.”

24 (c) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to actions relating to terminations

- 1 or reductions of retiree health benefits which are pending
- 2 or brought, on or after March 23, 1995.

